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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,892	02/19/2004	Heinz Kettler	A-8927 .NOMP	9071

7590 11/01/2005  
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EXAMINER

NELSON JR, MILTON

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/780,892

Applicant(s)

KETTLER ET AL.

Examiner

Milton Nelson, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-14 and 16-45 is/are pending in the application.
- 4a) Of the above claim(s) 20-27 and 35-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-14, 16-19 and 28-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

Non-elected claims 20-27 and 35-45 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected embodiment of the invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 15, 2005.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 12-14, 16-19 and 28-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In lines 6 to 7 of claim 12, it cannot be determined if Applicant intends to positively claim the cross strut. Note that Applicant states "can be fixed relative to one another via at least one cross strut". This appears not to represent a positive claiming of the cross strut. Lines 9 to 10 include the recitation "at least one bevel in at least one of the struts or the at least one cross strut", which appears to be a positive claiming of the cross strut. Also note lines 13 to 14, which include the recitation "wherein the connection between at least one of the struts and the at least one cross strut is a screw connection. This also appears to be a

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positive claiming of the cross strut. Note similar language throughout the claims (including independent claim 28). Clarification in the claim language is required. The remaining claims are indefinite since each depends from an indefinite claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12, 14 and 18, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 102(b) as being anticipated by Unger (4435882). Note the cover (12), struts (24, 24), cross strut (10), bevel (16), screw connection (20), and stacking chair or garden lounger (see Figures 1 and 2).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 19, as best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 103(a) as being unpatentable over Unger (4435882) in view of Schmid et al (6030040).

The primary reference shows all claimed structural features of the instant invention with the exception of the cover consisting essentially of textiles. Note the discussion of Unger above.

The secondary reference conventionally teaches the concept of configuring a seating assembly with a cover consisting essentially of textiles.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings found in the secondary reference configuring the cover as consisting essentially of textiles. Such provides a cover assembly that is configured for accommodating tensions applied to the cover.

***Allowable Subject Matter***

Claims 13, 16, 17 and 29-34 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim 28 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Response to Amendment/Arguments***

Applicant's response filed August 19, 2005 has been fully considered. Remaining issues are described in the above sections. Reconsideration of the prior art of record has necessitated a new grounds of rejection.

***Conclusion***

This Office action has not been made final since it includes a new grounds of rejection not necessitated by Applicant's amendment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is (571) 272-6861. The examiner can normally be reached on Monday-Wednesday, and alternate Fridays 5:30-3:00.

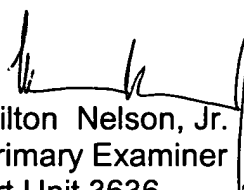
The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Milton Nelson, Jr.  
Primary Examiner  
Art Unit 3636

mn

October 29, 2005